

## General Services Administration

## 503.104-9

SOURCE: 64 FR 37204, July 9, 1999, unless otherwise noted.

### Subpart 502.1—Definitions

#### 502.101 Definitions.

*Agency competition advocate* means the GSA Competition Advocate in the Office of Acquisition Policy.

*Assigned counsel* means the attorney employed by the Office of General Counsel (including offices of Regional Counsel) assigned to provide legal review or assistance.

*Contracting activity competition advocate* means the individual designated in writing by the head of the contracting activity (HCA). This authority may not be redelegated. The HCA must ensure that the designated competition advocate is not assigned any duty or responsibility that is inconsistent with the advocacy function. The identity of the designated official shall be communicated to procuring staff and the Senior Procurement Executive.

*Contracting director* means:

(a) Except in FSS, a director of a Central Office or Regional office Division responsible for performing contracting or contract administration functions.

(b) In FSS, a director of a Commodity Center or FSS Bureau.

*Contracting officer's representative (COR), contracting officer's technical representative (COTR), or contract administrator* means a Government employee designated in writing by the contracting officer to perform specific limited activities for the contracting officer, such as contract administration.

*Debarring official or suspending official* means the Senior Procurement Executive or a designee.

*Head of the contracting activity* means the Deputy Associate Administrator for Acquisition Policy (MV); Commissioners of the Federal Technology Service (FTS); Federal Supply Service (FSS), or Public Buildings Service (PBS); or Regional Administrators. The Deputy Associate Administrator for Acquisition Policy serves as the HCA for Central Office contracting activities outside of FTS, FSS, and PBS.

*Senior procurement executive* means the Deputy Associate Administrator for Acquisition Policy.

*Senior program official* means a person reporting to, and designated by, the HCA to have overall program responsibility for determining how the agency will meet its need. The official should have a position of authority over the participating offices. Examples include Assistant Regional Administrators or Deputy Commissioners.

## PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: At 64 FR 37204, July 9, 1999, unless otherwise noted.

### Subpart 503.1—Safeguards

#### 503.104 Procurement integrity.

##### 503.104-3 Definitions.

*Federal agency procurement* as used in FAR 3.104 and in this section, also means acquisitions of leasehold interests in real property.

##### 503.104-9 Contract clauses.

###### *Acquisitions of Leasehold Interests in Real Property*

Insert a clause substantially the same as the clause at 552.203-70, Price

Adjustment for Illegal or Improper Activity, in solicitations and contracts for and modifications to leasehold interests in real property exceeding \$100,000.

### **Subpart 503.2—Contractor Gratuities to Government Personnel**

#### **503.204 Treatment of violations.**

(a) The Senior Procurement Executive, or designee, makes determinations under FAR 3.204.

The Senior Procurement Executive, or designee, takes all the following actions:

(1) Coordinates with legal counsel.

(2) Initiates proceedings under FAR 3.204(a) by notifying the contractor that GSA is considering action against the contractor for a violation of the Gratuities clause. Notice is sent by a certified letter to the last known address of the party, its counsel, or agent for service of process. In the case of a business, notice is sent to any partner, principal officer, director, owner or co-owner, or joint venture.

(3) Presumes receipt if no return receipt is received within 10 calendar days after mailing the notice.

(b) The contractor has 30 calendar days to exercise its rights under FAR 3.204(b), unless the Senior Procurement Executive, or designee, grants an extension.

(c) If there is a dispute of fact material to making a determination, the Senior Procurement Executive, or designee, may refer the matter to an agency fact-finding official designated by the Chairman of the GSA Board of Contract Appeals. Referrals for fact-finding are not made in cases arising from a conviction or indictment as defined in FAR 9.403. If a referral is made, the fact-finding official takes all the following actions:

(1) Gives the contractor an opportunity to dispute material facts relating to the determinations under FAR 3.204(a)(1) and (2).

(2) Conducts proceedings under rules consistent with FAR 3.204(b).

(3) Schedules a hearing within 20 calendar days of receipt of the referral. The contractor or GSA may request an extension for good cause.

(4) Delivers to the Senior Procurement Executive, or designee, written findings of fact (together with a transcription of the proceedings, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(d) The Senior Procurement Executive, or designee, may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.

(e) In cases arising from conviction or indictment, or in which there are no disputes of material fact, the Senior Procurement Executive, or designee, conducts the hearing required by FAR 3.204(b).

(f) If the Gratuities clause was violated, the contractor may present evidence of mitigating factors to the Senior Procurement Executive, or designee, either orally or in writing, in accordance with a schedule the Senior Procurement Executive, or designee, establishes. The Senior Procurement Executive, or designee, exercises the Government's rights under FAR 3.204(c) only after considering mitigating factors.

### **Subpart 503.4—Contingent Fees**

#### **503.404 Contract clause.**

Insert 552.203-5, Covenant Against Contingent Fees, in solicitations and contracts for the acquisition of leasehold interests in real property expected to exceed \$100,000.

### **Subpart 503.5—Other Improper Business Practices**

#### **503.570 Advertising.**

##### **503.570-1 Policy.**

GSA policy precludes contractors from referring to GSA contracts in commercial advertising in a manner that states or implies the Government approves or endorses the product or service or considers it superior to other products or services. The intent of this policy is to prevent the appearance of Government bias toward any product or service.

**503.570-2 Contract clause.**

Insert the clause at 552.203-71, Restriction on Advertising, in solicitations and contracts, including acquisitions of leasehold interests in real property, if the contract amount is expected to exceed the simplified acquisition threshold.

### Subpart 503.7—Voiding and Rescinding Contracts

**503.702 Definition.**

*Notice* means a letter sent by certified mail with a return receipt requested to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt is presumed.

*Voiding and rescinding official* means the Senior Procurement Executive or designee.

**503.705 Procedures.***(a) Contracting officer's actions:*

(1) If a contract is tainted by misconduct, consult with assigned counsel to determine if the Government has a common law remedy such as avoidance, rescission, or cancellation.

(2) If the contractor has a final conviction for a violation under 18 U.S.C. 201-224, you may refer the matter to the voiding and rescinding official under FAR 3.705.

(i) In the referral, identify the final conviction and include the information required by FAR 3.705(d)(2) through (5).

(ii) Coordinate the referral with the Office of Inspector General to determine whether to recommend debarment.

(3) You may postpone a decision to exercise the Government's common law right to void, rescind, or cancel a contract until completion of legal proceedings against the contractor.

*(b) Voiding and rescinding official's actions:*

(1) The voiding and rescinding official reviews the referral and coordinates with assigned counsel and the contracting activity.

(2) If the official decides to declare void and rescind a contract and to recover the amounts expended and the property transferred, the official takes both the following actions:

(i) Issues the notice required by FAR 3.705.

(ii) Conducts the hearing contemplated by FAR 3.705(c)(3).

(3) In case of a dispute of material fact about the agency decision, the official refers the matter to the fact-finding official designated by the Chairman of the GSA Board of Contract Appeals. The voiding and rescinding official makes this referral if the dispute of fact relates to any of the following:

(i) Contracts affected by the final conviction.

(ii) Amounts expended and property transferred by the Government under the affected contracts.

(iii) Identity and value of any tangible benefits received by the Government under the affected contracts.

(4) The voiding and rescinding official issues GSA's final decision under FAR 3.705(e) after receiving the fact-finding official's report, if a referral was made. The voiding and rescinding official may reject the fact-finding official's findings only if they are clearly erroneous or arbitrary and capricious.

(5) The official coordinates the final decision was the contracting activity and provides the activity a copy of the decision.

*(c) Fact-finding official's actions:* The fact-finding official takes all the following actions:

(1) Gives the contractor an opportunity to dispute material facts.

(2) Conducts the proceedings under rules consistent with FAR 3.705(c)(3).

(3) Schedules a hearing within 20 calendar days after receiving the referral. The official may grant extensions for good cause at the request of the contractor or GSA.

(4) Delivers written findings of fact to the voiding and rescinding official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.